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10/080,652	02/22/2002	Gregory B. Altshuler	P00547/70076 PLC	8139

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EXAMINER

SHAY, DAVID M

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 10/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/080,562

Applicant(s)

A. E. E. E. E.

Examiner

J. Shay

Group Art Unit

3739

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE —3— MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on January 10, 2003.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-91 is/are pending in the application.  
Of the above claim(s) 6, 7, 11, 12, 14-17, 22-24, 26, 34-40, 42-46, 48, 50, 53-58, 62, 65, 68, 76-83, 85, & 89-91 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-5, 8-10, 13, 18-21, 25, 27-33, 41, 47, 48, 51, 52, 54-61, 66, 67, 69-75, 84, 86, 88, & 87 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

Art Unit: 3739

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claim 1-41 and 47-91 are, drawn to an apparatus for and method of phototreatment, classified in class 606, subclass 9.
- II. Claim 42, drawn to a method of hair removal, classified in class 606, subclass 9.
- III. Claim 43 is, drawn to a method of treating a vascular lesion, classified in class 606, subclass 9.
- IV. Claim 44 is, drawn to a method of skin rejuvenation, classified in class 607, subclass 88.
- V. Claim 45 is, drawn to a method of treating acne, classified in class 606, subclass 9.
- VI. Claim 46 is, drawn to a method of treating pigmented lesion, classified in class 606, subclass 9.

In the event that group I is chosen, a further election of species must be made.

This application contains claims directed to the following patentably distinct species of the claimed invention: Figures 1 and 2; Figures 11 a-c; Figures 14a and 14b; Figures 20a-d; Figures 21a and 21b; and Figures 28.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, a 1-5, 8-10, 13, 18-21, 25, 41, 47, 48, 51, 52, 59-61, 66, 67 and 84 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable

Art Unit: 3739

thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 31, 33, 73, and 75 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification, as originally filed is silent regarding a mechanism for detecting the depth of blood vessels.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 3739

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5, 18-20, 27-33, 59-61 and 69-75 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear how claim 5 further limits claim 4. Claims 18-20 and 27-33 and 59-61 and 69-75 respectively, are substantial duplicate. Claim 27 positively recites the skin.

Applicant Information Disclosure Statement is noted. However, the copies of the references appear to be no longer associated with the case. The examiner respectfully requests that copies of the listed references be re-transmitted, that they may be considered.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 8, 9, 13, 18-21, 25, 27, 28, 30, 32, 41, 47, 48, 51, 59-61, 66, 67, 69, 70, 74 and 84 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hollnagel.

Claims 1, 28-39, and 70-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Currey in combination with Hollnagel. Currey teaches a device with a concave waveguide comprising a tissue contacting area and ruin which applies radiation. Hollnagel teaches the desirability of providing reflective casing lamps and waveguides. It would have been obvious to the artisan of ordinary skill to employ a coating on the device of Currey, since this would increase the efficiency thereof, as taught by Hollnagel, thus producing a device such as claimed.

Art Unit: 3739

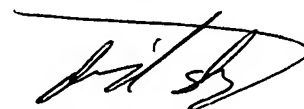
Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gustafsson in combination with Hollnagel. Gustafsson teaches a treatment device including a cooling fluid flowing between the lamps and the applicator. Hollnagel teaches the desirability of coating a waveguide with a reflective material. It would have been obvious to the artisan of ordinary skill to coat the waveguide of Gustafsson with a reflective material, thus producing a device such as claimed.

Claims 1, 4, 10, 47, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al ('041) in combination with Hollnagel. Anderson et al ('041) teach employing a diffuse reflector in a light treatment device. Hollnagel teaches the desirability of coating a waveguide with reflective material. It would have been obvious to the artisan of ordinary skill to employ the coating of Hollnagel in the device of Anderson et al, thus producing a device such as claimed.

Claims 86 and 87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al ('844) in combination with Grove et al. Anderson et al ('844) teach employing pressure to control the depth of application of the laser energy. Grove et al teach that the treatment of unwanted hair involves coagulation of the blood vessels supplying the follicle. It would have been obvious to treat the blood vessels supplying the hair follicle in the method of Anderson et al ('844) since this is required to produce permanent hair removal, as taught by Grove et al thus producing a method such as claimed.

Any inquiry concerning this communication should be directed to David Shay at telephone number 308-2215.

Shay/DL October 15, 2003



DAVID M. SHAY  
PRIMARY EXAMINER  
GROUP 330